

Chapter 32 - Contract Financing

Section 32.1 Contract Funding Requirements

32.1.1 PURPOSE

The purpose of this section is to provide a method of identifying all contract funding actions as either partial or complete. The procedures are designed to preclude total decommitment of available (committed) contract funds when only a portion should be decommitted and obligated.

32.1.2 BACKGROUND

This section was originally issued as Unit 10 of the Acquisition Handbook.

32.1.3 AUTHORITY/APPLICABILITY (*RESERVED*) 32.1.4

DEFINITIONS (*RESERVED*)

32.1.5 POLICY

Whenever it is desired that less than total obligation of funds is to be accomplished (as in the issuance of multiple contract awards under a single PR or whenever both the contract award and the RFP printing costs are to be paid for by the RFP) a "P" (Partial) code shall be inserted as the first symbol in the funds citation, e.g.:

CODE	APPROP DCN	ACCT NO	OD	AMT	SFO
P-1*	68X0100	A00123	604726R999	2548	\$15,500 99

* Denotes the first partial obligation. The final obligating document will be coded "C" (Complete) as illustrated below:

CODE	APPROP DCN	ACCT NO	OD	AMT	SFO
C-4**	68X0100	A00123	604726R999	2548	\$2,250 99

** Denotes the fourth and final funding action, e.g.: P-1, P-2, P-3, -4.

For purposes of the contract operation's internal control, the first contract awarded under any PR will serve as the control document. All partial funding actions will be recorded in sequence on the

control document. The final funding action under any PR will be coded "C" to denote that any funds remaining are to be totally decommitted by the Financial Management Center.

32.1.5.1 Memorandum Decommitment Notice

Conditions may occur whenever the last funding action was inadvertently coded as a partial or where unforeseen circumstances require that no further actions are to be made on a PR. In such a situation, a memorandum decommitment notice will be prepared by the Contracting Officer and forwarded to the Responsibility Center from where the action originated. The decommitment notice must cite the exact remaining balance of funds in order that the proper decommitment action can be taken by the office responsible for entering commitment data.

The data program being used by the Financial Management Center is not designed to account sequentially for all "P" coded obligating documents; therefore, there may be occasions where the "C" coded document is processed ahead of a "P" coded document. In such instances, the Responsibility Center will prepare and process a commitment action reestablishing that portion of committed funds which was erroneously liquidated.

Section 32.2 Contract Contingency Balances

32.2.1 PURPOSE

This purpose of this section is to establish policy for contract contingency balances necessary to protect the Government's interests.

32.2.2 BACKGROUND

Prior to September 30, 1999, all expired appropriations were to be canceled five years after their expiration with no obligation adjustments or disbursements permitted to these canceled funds (e.g. funds expiring 9/30/91 will be canceled 9/30/96). Beginning on October 1, 1999, the cancellation period for expiration of expired funds was revised to seven years (e.g. funds expiring 9/30/01 will be canceled 9/30/08).

This section was originally issued as Unit 21 of the Acquisition Handbook. **32.2.3**

AUTHORITY/APPLICABILITY

The establishment of contingency balances under contracts is used to protect the Government's interest, such as to offset costs claimed by a contractor later found to be unallowable. Traditionally, EPA Contracting Officers (COs) have required withholdings from contractor invoices to establish these balances. Withheld amounts properly owed to contractors are released at the completion of contract closeout.

No-year funds, such as the Agency's Superfund appropriation, are not impacted, since these funds do not expire and are, therefore, not subject to cancellation. However, for consistency in applying the contract contingency balance policy across appropriation lines, the policy in this unit is applicable regardless of the source of funding.

32.2.4 DEFINITIONS (*RESERVED*)

32.2.5 POLICY

Because of OMB requirements and the potential impact on future funding limits, COs should generally not establish contract contingency balances under contracts that will require disbursement after funds are canceled. COs should only establish contract contingency balances (under FAR provisions permitting withholdings, such as FAR 52.216-8 and 52.216-10) when subsequent recovery of unallowable costs from a contractor would be difficult (such as poor financial condition of the contractor). This unit serves as a class deviation to the required withholdings related to Fixed-Rate

Services Contracts in EPAAR 1552.232-73(a)(2).

DOCUMENT OBSOLETE

When a CO determines that a contract contingency balance is necessary, the amount must be limited to the minimum necessary to protect the Government's interest within applicable FAR and EPAAR limits (e.g. not to exceed \$100,000 under FAR 52.216-8 or \$50,000 under EPAAR 1552.232-73). The CO should review the established reserve prior to the cancellation of funds to determine if all or part of the contract contingency balance may be released.

32.2.5.1 Amounts Previously Withheld as Contingency Balances

COs will be notified by the Office of Acquisition Management of specific actions and milestones for release of previous contract contingency balances (in accordance with the above policy) in advance of these cancellation dates. No action is required by COs until they are so notified.

32.2.5.2 New Solicitations

Contract clauses have been developed to inform an EPA contractor in those instances when the CO has determined that a contract contingency balance is necessary. A copy of these clauses is included as Appendix 32.2A. one clause is for use when a reserve will be established under FAR provisions related to cost-plus fixed-fee and cost-plus-award-fee type contracts; the second clause is for use when a contract contingency balance is being established under EPAAR 1552.232-73.

(Note: the CO should develop a similar clause when a reserve is established under other FAR or EPAAR provisions). The clause will be automatically included in all affected contracts as part of the Integrated Contracts Management System (ICMS). At their discretion, COs may incorporate the appropriate clause into existing contracts.

APPENDIX 32.2A FAR CONTRACT CONTINGENCY BALANCES

EP52.232-130 FAR Contract Contingency Balances

If the Contracting Officer determines that a contract contingency balance is necessary under FAR provisions related to cost-plus-fixed-fee and cost-plus-award-fee type contracts, insert the following clause in contracts:

FAR CONTRACT CONTINGENCY BALANCES (AUG 1991)

The Contracting Officer has determined that a contingency balance is necessary for this contract to protect the Government's interest. The amount of the contingency balance shall not exceed \$ *
After payment of 85% of the fixed fee on a cost-plus-fixed-fee contract or 85% of the base fee on a cost-plus-award-fee contract, further payment of such fee shall be withheld until this contingency balance is established.

(end of clause)

32.3 Review of Unliquidated Obligations Under Contracts

32.3.1 PURPOSE

This purpose of this section is to establish uniform procedures to deobligate excess funds for all EPA contracts which have had no payment, obligation or adjusted activities within the last 180 days, or when the contracting officer or project officer is certain funds will not be needed on contracts.

32.3.2 BACKGROUND

This section provides procedural guidance to ensure any excess EPA funds under contracts are deobligated in a timely and uniform manner throughout the Agency. Designated funds may then be used for other purposes, if consistent with the intent and term of the appropriation and are available for new obligation if the term of the obligation had not expired.

Beginning on October 1, 1999, the cancellation period for expiration of expired funds was revised to seven years (e.g. funds expiring 9/30/01 will be canceled 9/30/08). Prior to September 30, 1999, all expired appropriations were to be canceled five years after their expiration with no obligation adjustments or disbursements permitted to these canceled funds (e.g funds expiring 9/30/91 will be canceled 9/30/96).

This section was originally issued as Unit 24 of the Acquisition Handbook.

32.3.3 AUTHORITY/APPLICABILITY

FAR 32.700 and agency fiscal regulations.

32.3.4 DEFINITIONS *(RESERVED)*

32.3.5 POLICY

The contracting officer (CO), with input from the Project Officer (PO), will deobligate excess funds for all EPA active and inactive contracts, including those made with no-year appropriations, which have had no payment, obligation, or adjusted activities within the last 180 days. (see 32.3.5.4 E), "Basis for Deobligations.") Notwithstanding the 180-day period, the PO should immediately provide the CO with input recommending a deobligation action on any contract or contract period for which no subsequent funding activity is anticipated.

32.3.5.1 Reports

- A) The Research Triangle Park Financial Management Center (RTP-FMC) will distribute reports showing unliquidated obligations for contracts identified as "inactive", i.e., contracts which have had no payment, obligation, or adjustment activities within the last 180 days.
- B) These reports will be distributed annually, early in the second quarter (January/February), directly to the Office of Acquisition Management (OAM) contracting activities at Headquarters, Research Triangle Park, Cincinnati, and to the Regional contracting activities for review of their respective contracts to determine if the unliquidated amounts should be deobligated. Following this review the CO will notify the contractor to submit vouchers/invoices for any unclaimed costs for payment consideration to RTP-FC (Finance Center) for processing and payment in accordance with the contract terms.

32.3.5.2 Verification of Account Balances

- A) Prior to processing any contract modifications to deobligate funds for contracts paid by the RTP-FMC, COs must verify that the undisbursed obligation balance as shown in the Contract Payment System (CPS) does not conflict with the requested deobligation. COs may do this in one of two ways: 1) by direct access to the CPS; or 2) through e-mail.
- B) Direct access to the CPS permits a CO to confirm undisbursed balances without the need for involvement by RTP-FMC personnel. This method is recommended for COs who process a large number of contract modifications for deobligations. A CO desiring direct access to the CPS should contact RTP-FMC Financial Systems Section at (919) 541-3016 for further information.
- C) E-mail is recommended for verifying balances by COs who process deobligations infrequently. E-mail requests for undisbursed obligation balances should be sent to **RTP.Customer**. The "Subject" line of the EMAIL message should be shown as "Contract Obligation Verification." The message should indicate the contract number of the obligation to be verified, contractor name, and delivery order number (if applicable). RTP-FC (Finance Center) will verify the balance in the CPS and transmit this information back to the CO using e-mail showing the contract number, account number, document control number, and unpaid obligation amount.
- D) Regardless of which method is used, the CO should retain documentation in the official contract file indicating the information received. (Note: RTP-FMC can only verify obligation balances based on disbursements that have already been made. The POs should be consulted if there are possible invoices awaiting PO approval. If e-mail is used the PO should be included in the distribution.)

32.3.5.3 Basis for Deobligations

- A) COs, with input from the PO, will make the final decision to deobligate all, part, or none of the unliquidated balances based on unsettled performance issues, anticipated indirect rate adjustments, remaining work to be done on the contract, unpaid invoices, and any disputes or claims. If final indirect cost rates have been agreed to, the CO may deobligate any excess funds.
- B) In most cases, deobligations will be accomplished by modification to the contract. The deobligation of funds for cost type contracts will be based on a signed bilateral contract modification. If no agreement can be reached relative to the amount, then the CO can issue a unilateral modification which the contractor may appeal under the Disputes Clause.
- C) The Chief, RTP-FMC is delegated authority to deobligate remaining funds for contract actions with remaining obligations less than \$100 which are inactive for 180 days or more. Before processing deobligations, RTP-FC (Finance Center) will notify the Contracting Officers for the proposed actions. If Contracting Officers do not contact RTP-FMC within 30 days, funds will be deobligated.
- D) RTP-FC (Finance Center) will provide copies of the deobligation actions to the Project Officers and Contracting Officers.
- E) COs will contact the Program Office's Senior Budget Officers if they cannot locate the appropriate PO for inquiries on individual deobligations.
- F) Program Offices should realize that, notwithstanding due care and the exercise of prudent judgment, there may be isolated instances of subsequent claims on contracts even after deobligation, which may have to be paid from current year funding. An example is an upward adjustment in indirect cost rates which results in increased costs.

32.3.5.4 Certification

Upon completion of reviews by contracting activities at Headquarters, Research Triangle Park, and Cincinnati, the Director, OAM will certify annually to the Financial Management Division the completion and results of the reviews of unliquidated obligations. Regional COs will certify the completion and results of their reviews to their Regional Senior Resource Officials (SROs), who will provide certifications for all regionally serviced inactive unliquidated obligations to the Financial Management Division.

Section 32.4 Processing Contractor Refunds

32.4.1 PURPOSE

The purpose of this section is to enhance controls over, and timeliness in, the collection of monies from EPA contractors.

32.4.2 BACKGROUND

This section was originally issued as Procurement Policy Notice (PPN) 99-01 dated February 4, 1999, from Betty L. Bailey, Director of the Office of Acquisition Management to OAM Division Directors, Regional Contracting Officer Supervisors, and Howard Corcoran (Office of General Counsel).

32.4.3 AUTHORITY/APPLICABILITY (*RESERVED*)

32.4.4 DEFINITIONS (*RESERVED*) 32.4.5 POLICY

32.4.5.1 Procedures for Processing Contract Refunds

Once an amount to be refunded from the contractor to the Government is established, the Contracting Officer shall take the following actions:

A) Issue a letter to the contractor (Appendix 32.1A is a sample format). The letter must include the following information:

- 1) Notification of dollar amount owed to EPA,
- 2) Instructions for remittance in one of two ways:
 - Either through a financial institution via the National Automated Clearing House (ACH) credit payment instructions (i.e., electronic funds transfer (EFTH)), or
 - By mailing a check to RTP-FC (Finance Center)'s Mellon Bank "lock box" account,
- 3) Instructions for submission of contract closing documentation. Closing documentation to be provided to the contractor includes EPA Forms 1900-5, Contractor's Assignment of Refunds, Rebates and Credits, and 1900-6, Contractor's

Release (copies of these forms are available at
<http://intranet.epa.gov/nrmp/forms/list.htm>)

- 4) Statement of interest assessment if the contractor does not pay the full amount due within 30 days of the date of the Contracting Officer's letter. Also, a notice of late handling and penalty charges in case of delinquency;
 - 5) A date on the letter consistent with the certified mail transmittal date.
- B) Complete the "Accounts Receivable Request" form. This form is available through EPA's Intranet at <http://intranet.epa.gov/rtp/forms/index.htm>
- C) Submit a copy of the Contracting Officer's letter and the "Accounts Receivable Request" form to RTP-FC (Finance Center) within 24 hours after issuing the letter to the contractor. See Appendix 42.8Q for details on submission to RTP-FC (Finance Center).
- D) Promptly report all financial recovery actions to your Management Audit Tracking System (MATS) coordinator.
- E) Explanatory Note on Preferred Payment Method

EFT is the preferred method of payment which should be pursued to the maximum extent practicable. Before sending this letter, the Contracting Officer should ascertain the feasibility of EFT payment by the contractor.

The Debt Collection Improvement Act of 1996 requires electronic funds transfer for Federal Government payments. The National Automated Clearing House is a non-profit trade association responsible for promulgating standard rules and operating guidance for electronic payments.

**Appendix 32.4.1A SAMPLE FORMAT FOR CONTRACTING OFFICER'S REQUEST
FOR PAYMENT**

Date

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CONTRACTOR NAME

CONTRACTOR ADDRESS

SUBJECT: Contracting Officer's Request for Payment, Contract No. 68-
XX-XXXX

Dear XXX:

In accordance with the provisions of the above referenced contract a final reconciliation of the total, cumulative costs, was performed. Please submit a final credit voucher and check in the amount of \$4,404.28 within 30 days of the date of this letter. The total cumulative costs deemed acceptable are as follows:

Total Amount	\$169,198.87 (1)
Claimed Amount Paid to Contractor	<u>\$(173,603.15) (2)</u>
BALANCE DUE EPA	\$ (4,404.28)

**[CONTRACTING OFFICER SHOULD ALSO ADDRESS CONTRACTOR CLAIMED
COSTS DETERMINED TO BE UNALLOWABLE.1**

NOTES:

- (1) Amount claimed per your cumulative claim dated XXX.
- (2) Per voucher payment records in the EPA-RTP Financial Management Center.

Please forward the amount due EPA via:

**[CONTRACTING OFFICER CHOOSE APPROPRIATE PAYMENT METHOD ~
EITHER ACH CREDIT OR CHECK - SEE THE PPN UNDER REQUIRED ACTIONS,
1.a.(2), FOR GUIDANCE.]**

ACH Credit Payment Method:

ABA# 051036706 Account # 349007
Voucher Number: XXX Contract
Number: XXX EPA ACH Contact
(919) 541-3505

and

A copy of the final credit voucher to RTP-FC (Finance Center) (ATTN.: MD-32).

OR

Check Payment Method

Send original check (payable to U.S. Environmental Protection Agency) to:

U.S. Environmental Protection Agency
P.O. Box 360945M Pittsburgh, PA 15251

and

A copy of the final credit voucher to RTP-FC (Finance Center) (ATTN.: MD-32).

2. Please also forward the following contract closing documentation to the Contracting Officer:

a. A copy of the check, when the check payment method is used. When the ACH method is used, send a copy of the evidence provided by the bank.

b. Two fully executed originals (original signature(s) and corporate seal, if applicable) of the following:

- (1) final credit voucher;
- (2) Completed EPA Form 1900-5, "Assignment of Refunds, Rebates and Credits", and
- (3) Completed EPA Form 1900-6, "Contractor's Release".

Blank forms 1900-5 and 1900-6 are included for your convenience (Attachment). Contracts

This letter represents EPA's initial request for payment. If payment is not received within 30 days of the date of this letter, please be advised that interest will accrue on the amount due at the current per annum rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Financial Manual Bulletin for each subsequent 30-day period during which the account is outstanding. If your payment is overdue, EPA may also impose a late payment handling charge of \$15 for each subsequent 30-day period. Additionally, EPA may apply a 6 percent per annum penalty on any principle amount not paid within 90 days of the date of this letter.

Upon receipt of the referenced closing documents, processing of the final credit voucher, and verification of electronic payment or receipt/processing of refund check, EPA will consider this contract closed. We appreciate your assistance in helping us close out this contract. If you should have any questions, please contact me at (XXX) XXX-XXXX.

Sincerely,

Contracting Officer

Attachment

cc: RTP-FC (Finance Center) (MD-32)